

APPEAL NO. 020943  
FILED JUNE 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 28, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 12th quarter. The claimant appealed, challenging the determination on sufficiency grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 12th quarter. The claimant proceeded with a total inability to work theory. It is undisputed that the claimant met the threshold eligibility requirements: (1) he had an impairment rating of 15% or greater; (2) he had not commuted his impairment income benefits; and (3) he earned less than 80% of his average weekly wage during the qualifying periods in issue. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(1) (Rule 130.102(b)(1)) (general eligibility requirements). However, in order for the claimant to succeed on a total inability to work argument, he must have met the requirements of Rule 130.102(d)(4), which reads:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The hearing officer is the sole judge of the weight and credibility to be given the evidence. Section 410.165(a). The hearing officer determined that the claimant had not provided a narrative explaining why his compensable injury caused his total inability to work. Further, the hearing officer believed that there was an "other record," from the designated doctor, showing that the claimant had at least a sedentary ability to work. The claimant introduced conflicting evidence on the issue, including that the designated doctor's report was over two years old, and that his treating doctor's report(s) constituted a narrative for the purposes of the rule. However, upon our review of the record, we conclude that the hearing officer's determination that the claimant was not eligible for SIBs for the 12th quarter is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL**  
**9330 LBJ FREEWAY, SUITE 1200**  
**DALLAS, TEXAS 75243.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge